

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

DAVID M. COX,

Defendant.

Cause No. 4:18-cr-00017-TWP-VTW

GOVERNMENT'S SENTENCING MEMORANDUM

This case is about respect for the law, and the Defendant's lack of it. The Defendant is a recidivist. In fact, he bragged about his prior crimes. He was particularly proud of his assault of a federal officer over 40 years ago. He has a tattoo on his leg of a game warden hanging from a noose. He talked openly about being a felon and about how it was illegal for him to possess firearms. Nevertheless, he possessed nearly a dozen of them: The loaded revolver in the visor of his truck. The loaded semi-automatic pistol in his bedroom nightstand. The shotgun leaning against the wall in his fish shop. The handgun he offered to sell to an undercover officer. The short-barreled shotgun in the kitchen pantry, lying next to a box of shotgun shells, a rifle, another shotgun, and two semi-automatic handguns, one of which was reported stolen. Among others.

Then, remarkably, on November 10, 2018, just about two weeks before sentencing, U.S. Fish and Wildlife agents received a report that a local ammunition dealer had received a call from the Defendant asking if he could purchase 600 rounds of assault rifle ammunition “for a friend.” The agents interviewed the dealer and confirmed the report. The dealer had called the local sheriff’s office because he was aware of the pending case against the Defendant and was concerned about the Defendant’s request.

Beyond the guns, his prior convictions confirm that the Defendant has not learned his lesson. Two of them are wildlife offenses similar to that which he is pleading guilty to today. One, a felony, was a conviction under the Lacey Act, the same federal wildlife statute he is presently charged with. The other, a misdemeanor, was for illegally fishing for American paddlefish – the very same type of conduct he is charged with today. This record is consistent with his attitude toward wildlife in general, as his comments made an undercover conservation officer made clear.

In sum, the Defendant's record of disdain for the law and disregard for wildlife should guide the Court's sentencing in this case. To be sure, the Defendant's supportive letters show a man deeply connected to his family, friends, and community. And they should of course be taken into account. On balance, however, they do not justify a sentence of probation, as the Defendant requests. A non-custodial sentence would equate to at least a 12-level departure from the Guidelines range to Zone B and a 15-level departure to Zone A. Rather, in light of the Defendant's record and his refusal to respect the law, a sentence of incarceration reasonably close to the advisory Guidelines range, along with a significant period of supervised release, is sufficient but not greater than necessary to meet the goals of sentencing under 18 U.S.C. § 3553(a), particularly to promote respect for the law and deter a recidivist like the Defendant.

BACKGROUND

The Defendant committed Unlawful Possession of a Firearm by a Felon, in violation of 18 U.S.C. § 922(g) (Count 1), and violated the Lacey Act, the federal wildlife trafficking statute, 16 U.S.C. § 3372(a)(2)(A) (Count 2). The Presentence Report ("PSR") concisely summarizes the Defendant's past criminal history and present criminal conduct, including the numerous firearms

had any guns, he stated multiple times that he did not – despite the agents finding numerous guns throughout the premises, including in his truck’s sun visor.

Despite knowing he was prohibited from possessing firearms, he possessed nearly a dozen and brazenly so, even offering to sell one to CO Walker. Such behavior in light of his knowledge reflects a blatant disrespect for the law.

C. The Defendant Has a History of Disregard for Wildlife Laws

The Defendant’s contumacious conduct is not limited to possessing firearms. He also has repeatedly failed to respect state and federal wildlife laws. The Defendant is a recidivist. All three of his prior convictions are wildlife-related. In fact, the Defendant has been previously convicted under the same statute to which he is pleading guilty today (the Lacey Act) and, separately, previously convicted of a crime involving the same species of wildlife at issue today (paddlefish). *See* PSR ¶¶ 42–43.

As the PSR points out, the Defendant’s disregard of commercial fishing regulations extended beyond simply keeping and killing an undersized paddlefish. *See* PSR ¶ 6–7. The Defendant fished wherever and however he wanted. He fished in closed areas where paddlefish congregate, contributing to overfishing the species. He underreported the fish that he caught or that died in his nets, affecting biologists’ ability to accurately assess the health of the species. And he used a crude, oversized hollow metal rod to stab the fish and check if they were bearing eggs, which can injure or kill the fish.

The fishing regulations exist to preserve the species and ensure a level playing field for all commercial fishermen. The Defendant put his interest in personal profits above that, though. He summed up his views toward the species and the rules that protect them when undercover CO

Walker asked the Defendant why he thought the paddlefish population was declining. The Defendant flippantly replied, “That’s because I killed them all.”

* * *

The Court’s sentence should promote respect for the law and deter this Defendant from future crimes. The Defendant’s distaste for the law is palpable. He even told undercover CO Walker that he has a tattoo on his leg of a game warden hanging from a tree. He is proud of his prior felony assault on a federal officer. He has consistently flouted wildlife laws. He knows he cannot own guns but openly possesses them anyway. And, as noted in the introduction, agents received a report that the Defendant attempted to purchase 600 rounds of assault rifle ammunition “for a friend” just two weeks before his sentencing on a charge of felon-in-possession of firearms.

The Defendant’s age, health, and letters in support, while relevant, do not justify the at least 12-level departure in the Guidelines required for a probationary sentence. Rather, under these facts, a sentence of incarceration is reasonably close to the Guidelines range is sufficient but not greater than necessary. The Court should sentence the Defendant accordingly.

Respectfully submitted,

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Date: November 21, 2018

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